CHAPTER - I

INTRODUCTION

Parliament is not only Legislative Organ but also in the words of Lord Denman – a grand inquest of nation.\(^1\) Parliament functions through free discussions, open debate, exchange of arguments and criticism. Privileges are, therefore, necessary to enable the members to discharge their duties and responsibilities affectively and efficiently without any interruption,\(^2\) especially the opposition bench who in a parliamentary polity has to build itself as an alternative government. These privileges are enjoyed by the members because House can not perform its function without unimpeded use of the services of its members and by each House collectively for the protection of its members and the vindication of its own authority and dignity.

Privileges are, therefore, necessary not only to help the legislators, fearlessly discharge their duties but also to keep up the solemnity and dignity of Parliament. Palmer’s statement that “Parliament without parliamentary liberties

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is but a fair and plausible way into bondage”, remains as true even today as it was three hundred years ago.³

Parliamentary privilege is an integral part of parliamentary democracy as it existed in England and adopted by many other democratic countries in the world. Whenever the parliamentary democracy of British pattern has been adopted, the concept of parliamentary privilege has also been made a part of such a democracy, although the extent of such a privilege has, of necessity varied in each country.⁴ However, in Australia and India, these privileges have been incorporated in its entirety in their respective Constitution.⁵

1.1 Meaning:

In parliamentary language, the term “privilege” applies to certain rights and immunities enjoyed by each House of Parliament collectively and by members of each

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4. For example in Canada, the parliamentary privileges of House of Commons has been incorporated vide Sec. 18 of British North America Act, 1867 as further amended by the Parliament of Canada Act, 1875. Similarly provisions also exist in the Constitution of Ceylon, New Zealand, South Africa and Ireland, See section 57 of Constitution of Union of South Africa, 1909 and Section 15(13) of the Constitution of Ireland.
Even in the case of “nation which has the Presidential type of democracy, the words “for any even in the House, they shall not be questioned in any other place,” has been interpreted by the Supreme Court of U.S.A. as incorporating the same immunity as is contained in Art. 9 of the Bill of Rights of U.K., see Kilbourn v. Thompson 181, 103 U.S. 168.
5. Section 49 of the Commonwealth of Australia Act, 1900; Articles 105 and 194 of the Indian Constitution.
House individually. The object of parliamentary privilege is to safeguard the freedom, the authority and dignity of parliament. In the words of May, privilege means “the sum of the peculiar rights enjoyed by each House collectively and by members individually without which they could not discharge their functions and which exceed those possessed by other bodies or individuals”.\(^6\) Redlich in his book, “Procedure of House of Commons” has defined the privilege as “sum of the Fundamental Rights of House and its individual members as against the prerogatives of the Crown, the authority of ordinary courts and special rights of the House of Lords”.\(^7\) From these definitions, it follows that the privileges though part of the law of the land are to a certain extent an exemption from ordinary law.

It may, however, be pointed out that the above definitions do not in its minute details deal with definition of the term ‘privilege’. The reason is obvious. To preserve

\(^6\) Thomas Erskine May, Treatise on the Law, Privileges, Proceeding and Usage of Parliament, 18 ed. P. 64 (hereinafter cited as May’s parliamentary Practice).

\(^7\) Redlich and libert, Procedure of House of Commons, Vol. I, p. 70. As against this, according to Black’s Law dictionary, 4th ed. P. 1360, ‘privilege’ means “A particular and peculiar benefit or advantage enjoyed by a person, company or class beyond the common advantage of other citizens. An exceptional or extraordinary power or exemption. A right, power, franchise or immunity held by a person or class against or beyond the courses of law”. The dictionary has further pointed out that the matter may be of personal privilege where it concerns one member of the House in his capacity as a legislator, or of the privilege of the House, were t concerns rights, immunities or dignity of the entire body.
the dignity and independence of the two Houses of Parliament, it was thought that the term ‘privilege’ must remain as undefined. It is, therefore, submitted that it is not possible to give an exhaustive and precise definition of the term “Privilege.”

In the modern time, term parliamentary privilege has to be viewed from a different angle than in the earlier days of the struggle of Parliament against the executive authority. Privilege at that time was regarded essentially as a protection of members of Parliament against the executive authority, which was not responsible to Parliament. The entire background in which parliamentary privileges are now viewed has now changed because executive is now responsible to Parliament. Privileges are now necessary to help the, members effectively and fearlessly discharge their duties and responsibilities and to keep the sanctity and dignity of Parliament.

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8. The matter regarding defining parliamentary privilege was considered by Select Committee of House of Commons on Official Secret Act as early as in 1939 and it was thought that no attempt should be made in defining such “privileges” (see also House of Commons Paper 164, 1939-40). In the year 1957, also similar attempt was made but without any success. In 1967, the Select Committee while reviewing the Law on parliamentary Privileges, went to the extent of saying that the term - ‘Privilege’ is itself a misnomer and recommended that the terms -should be substituted by the words “rights and duties”; (see also House of Commons Paper 34, 1967-68), Para 11.

The powers, privileges and immunities, are no doubt different,\(^{10}\) in the matter of their content. Thus the right of the House to have absolute control on its internal proceedings may be considered as its privilege; its right to punish for contempt may be more properly described as its power; while the right that no member may be liable for anything said in the House may be really as immunity. Since the term ‘privilege’ in the present work has been used in parliamentary sense, therefore, for the sake of convenience, all of them have been referred to as ‘privilege’.

By way of historical reference, the parliamentary privilege was born in England as a part of law of Parliament called ‘Lex-parliament’. The privileges attached to Parliament are of ancient and historical origin. These were originally part of king’s peace. The Commons, once a weak body put a fierce and prolonged fight and struggle

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10. The various words right, privilege, power and immunity have, in modern legal thought acquired distinct meanings. The exact analyses of these basic legal concepts has been done by Hohfeld’s which has been accepted by all modern Jurists. (See Hohfelds Fundamental Legal Conceptions as applied in Judicial Reasoning edited by W.W. Cook). See also Dias and Hughes's, Jurisprudence, 1957, ed. pp. 258-59.

11. May has observed that the distinction between privilege and function is not always apparent; for instance, the commons have certain executive financial rights which are more of function than of privilege. the more convenient course, therefore, is to confine the term privilege to those Fundamental Rights only that are essential for the successful exercise of each House of its Constructional Functions (May parliamentary practice, p. 64).
against the crown and even the House of Lords and later with the people themselves. The privilege, which originated for the special protection of the King, began to be claimed by commons as a customary right and its repeated assertion ripened them into legally recognized privileges.\(^\text{12}\)

The Indian Legislatures enjoyed very limited privileges under the Government of India Act 1919 and 1935.\(^\text{13}\) But when through the most peaceful revolution, India achieved her independence, the people of India assembled together in a Constituent Assembly to give themselves a Constitution. The system of parliamentary democracy was adopted as the most suited to the country's genius, ethos and background as parliamentary democracy alone could protect, sublimate and transcend into a higher purpose all the various conflicting interests.

Therefore, the privileges of the Indian Legislatures are specifically mentioned in the Constitution itself. Articles 105 and 194 deal with the privileges of Parliament and State Legislatures respectively. The wording of both the Articles is para materia the same. Clause(i) and (2) of both these Articles guarantees freedom of speech in Parliament.


\(^{13}\) Detailed treatment of evolution of privileges, will be discussed in Chapter II.
and immunity from civil and criminal proceedings to a
member in respect of anything said or done in Parliament
and also immunity to any person in respect of the
publication by or under the authority of either House of
Parliament in respect of any report, vote, papers or
proceedings. And for good or bad, the Constitution makers
tied the Indian Legislatures to the apron - strings of the
House of Commons in the matter of parliamentary
privileges. The privileges of real significance were
specifically embodied and ensured in emphatic terms in
clause (1) and (2) of Article 105, and for the rest, each
House of Parliament and State Legislature were left to sift
for themselves. The Constitution left them free to define
their privileges by law. But it is regretted that so far no
such law has been enacted.

1.2 HISTORICAL BACKGROUND

1.2.1 POSITION IN ENGLAND

The law of parliamentary privileges was born in
England as a part of General Law of Parliament called the
‘Lex-parliamenti’. The history of parliamentary privileges is

14. Articles 105 and 194. However by the Constitution (Forty Fourth
Amendment) Act, 1978, the reference to House of Commons has now
been done away with. The implications of this Forty-Forth
Amendment will be examined in Chapter III and VI and reference to
House of Commons still remains inevitable.

15. Clauses (1) and (2) of Art. 194 provide similar provisions in respect
of State Legislatures.
to a great extent a story of the fierce and prolonged struggle of Commons to win the rights and freedoms, which they enjoy today.\textsuperscript{16} The privileges of the House of Commons, the Mother of Parliament, originated in the ancient function of Parliament as the High Court of Parliament.

Thus, the pageant of parliamentary privileges, which has enlivened the pages of British history, goes back to the fifteenth century. The House of Commons through the ages, had to fight for its bare existence against the Crown, against the House of Lords and against the King’s Judges at different time. For such developments the House of Commons had to fight hard, necessitating at one stage the beheading of a King and abdication of another.\textsuperscript{17}

As a consequence the Commons were successful in getting some rights and privileges. The privileges, which were thus claimed, were claimed as customary rights. Even now at the beginning of session of Parliament, it has been a custom for Speaker to address a petition to the King stating:

“\textquote{In the name and on behalf of the Commons to lay claim by humble petition to their}

\textsuperscript{17} Chatterjee, A.P; Parliamentary Privileges in India, 1971 ed. p. 1,
ancient and undoubted right and privileges, particularly that may be free from arrest and all mole-stations that they may enjoy liberty of speech in all their debates, they may have access to Her Majesty's royal person whenever occasion shall required, and that all their proceedings may receive from her Majesty, the most favourable construction."

To the Speaker's petition, the Lord Chancellor replies on behalf of the Crown that "Her Majesty most readily confirms all the rights and privileges which have been granted to or confined upon the Commons by Her Majesty or any of her royal predecessor". Thereafter, the Speaker reports to the House that their privilege stands confirmed by Her Royal Majesty.

The aforesaid invariable address of the Speaker before the House of Lords at the beginning of each Parliament underlines the origin of the Privileges of Parliament as the Gracious Gift of the Sovereign, though both nature and scope of such privileges have been changed beyond recognition by centuries of struggle and fight with the

18. I.J. (1841) 571, also see May's Parliamentary Practice, pp. 66-67.
Crown. The developments can be imagined from the following facts. In the time of Henry IV, the only privilege claimed by the Speaker was for himself, “that he might be allowed to inform the King of the minds of Commons and that if he made any error in doing so, it might be corrected by reference to the House.” In 1536, there was a definite demand of access to the Crown, in 1541 came the demand for the freedom of speech and in 1554, the three claims of freedom from arrest, freedom of speech and of access were first made together and thereafter from the end of sixteenth century, the practice of making demands, as they are now made in the address of Speaker, became regular.21

Till lately, the Commons relied upon the King and the House of Lords for the enforcement of their privileges. The result was that these privileges were not often enforced. The King and the Lords were not always willing to protect the Commons. In Thorpe’s case (1452)22, not withstanding the privilege, the House of Lords did not release Thorpe, the Speaker of the House of Commons, who was arrested and imprisoned under the execution from the Court of Exchequer even the House of Commons applied for his

20. Ibid., p. 45.
22. 5. Rot. Parl. 239 (1452). (Rotuli Parliamentarum).
release and even though the Judges advised the Lords that Thorpe was entitled to be released.

It was not until 1543, in what is now famous as Ferror’s case,\textsuperscript{23} that the Commons took upon themselves the power to enforce their own privilege. George Ferror, a member of the House of Commons was arrested in London under order of the King’s Bench at the suit of one while as surety for the debt of another. The Commons ordered his release suo-moto without any reference to the Lords and sent their sergeant to procure his release, the Commons laid their case before Lords, Ferror was ultimately released but Sheriff who had resisted the release of Ferror as well as white were all committed for contempt.\textsuperscript{24}

Thus although the origin of the privilege was as a gift from the King but in the course of struggle of the Commons against the King and later with the Lords, these rights and privileges became increasingly claimed as their undoubted rights and privileges.\textsuperscript{25}

With the passage of time, parliamentary privileges in England have been fast moving towards moderation. The doctrine of privilege went a thorough and evolutionary process, as must all human institutions with potentialities

\textsuperscript{23} Mays’s Parliamentary Practice, p. 71; see also I Homshed, 824.
\textsuperscript{24} May’s Parliamentary Practice, 18 ed. p. 71.
\textsuperscript{25} Ibid., p. 66.
for growth and development. In the course of time old crudeness of struggle and sharp edge were rounded off as Parliament became mature and ‘rule of law’ took, the place of King’s prerogatives - A Great Development.

Now the Privileges of Parliament in the United Kingdom are based partly upon customs and precedents which are to be found in the Rolls of Parliament and the Journals of the two Houses and partly upon certain Statutes which have been passed from time to time for the purpose of making clear particular matters wherein the privileges claimed by either House of Parliament have come in conflict with either the prerogative of the Crown or with the rights of individuals.26

1.2.2 POSITION IN INDIA:

The Constitution of India came into existence on 26th January 1950, vouchsafed for the first time a short Code of Parliamentary Privileges.27 It is not as if prior to coming into force of the Constitution the concept of privileges was unknown to India. The Government of India Acts 1919 and 1935 have indeed some provisions which lay down the foundation of Parliamentary Privileges in India.

27. Art. 105 of the Constitution, Art 194 provide for the State Legislatures, the same powers, privileges and immunities.
(i) **Government of India Act, 1919**

It does not appear that before the Government of India Act, 1919; there was any Constitutional and statutory recognition of the privileges. The Indian Council Act, 1861, which established the first legislature in India under direct control of British, did not confer any privilege, power or immunity on the Houses of Indian Legislatures. This state of law continued till the advent of the Government of India Act 1919. It was under this Act that qualified privilege of freedom of speech was conferred. The relevant provisions prescribing the privilege of freedom of speech were as under:

“Subject to the rules and standing orders affecting the Council, there shall be freedom of speech in both the Chambers of Indian Legislatures. No person shall be liable to any proceeding in any court by reason of his speech or vote in either Chamber or by reason of anything contained in official report of the proceeding of either Chamber.”

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The rules and standing orders to which the freedom of speech was subject to, were the rules to be framed by Governor General which provided for regulating the business and preservation of the order in the Chambers of the Indian Legislatures. Again the Act provided that these rules shall be made by the Governor-General-in-Council with the sanction of the Secretary of State and shall not be subject to repeal or alteration by the Indian Legislatures.

Thus it is evident from these provisions that the privilege of freedom of speech then was ultimately subject to the pleasure of the Governor General and Secretary of the State. So the murmuring and dissatisfaction continued until the Government of India Act, 1935 was enacted.

(ii) **Govt. of India Act, 1935**

The Govt. of India Act, 1935, no doubt made substantial improvements upon state of affairs that existed before, in respect of the privilege, power and immunity by making certain provisions in the Act. The relevant provisions, in respect of privileges of the Federal and Provincial Legislatures were contained in sections 28 and

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71 respectively. The principal provisions in respect of Federal Legislature were as under: 31

Section 28(1) "subject to the provisions of this Act and to the rules and standing orders regulating the Procedure of the Federal Legislature, there shall be freedom of speech and no member of the legislature shall be liable in any proceeding in any court in respect of anything said or any vote given by him in the legislature or any Committee thereof, and no person shall be so liable in respect of publication by or under the authority of either House of Legislature of any report, paper, vote or proceedings".

28 (2) In other respect, the privileges of the members of the Chamber shall be such as may from time to time be defined by Act of the Federal Legislature, and until so defined shall be such as were immediately before the establishment of Federation enjoyed by the members of the Indian Legislatures.

28(3) Nothing in any existing Act, and not withstanding anything in the foregoing provision of this section, nothing in this Act shall be construed, on either Chamber or on both Chamber’s sitting together, or any Committee or Officer of the Legislature, the status

31. Sec. 71 of this Act made similar provisions for provincial legislatures.
of the court, or any punitive or disciplinary powers infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

28(4) Provisions may be made by any Act of the Federal Legislature for the punishment or conviction before a court, of persons who refuse to give evidence or produce documents before a Committee of Chamber when duly remained to do so by the Chairman of the Committee.

28(5) The provision of sub Sec. (1) and (2) of this section shall in relation to the persons, who by virtue of this act have the right to speak in and otherwise take part in the proceeding of the Chamber as they apply in relation to members of the legislature.

Besides these provisions Sec. 38 of the Act made a provision empowering each House to frame rules subject to the provisions of Act to regulate its procedure and conduct of its members. But the Governor General in his discretion or in his individual judgment and several other matters enumerated in the Act itself was empowered to make rules for regulating the procedure of the business of each House.
The rules thus made by the Governor General were to prevail over rules made by the House.\textsuperscript{32} Sections 28(3) and 71(3) expressly denied to those legislatures the penal jurisdiction of the House of Commons and sections 28(4) and 71(4) obliged the said legislature to approach a court for punishing persons who refused to give evidence or to produce documents before its Committee. It thus denied the legislature the powers, which House of Commons had exercised of committing a refectory party for contempt.\textsuperscript{33}

But as the position was still very unsatisfactory and it was almost universally acknowledged that rights and privileges of the members and legislatures were very limited. The Bihar Legislative Assembly by its resolution at its meeting held on 17.5.1939 claimed more privileges and reacted forcefully to the unsatisfactory state of affair in respect of privileges.\textsuperscript{34}

The following words of Shri V.J. Patil president of the Central Assembly will ring true for all times:

"....The House generally would recognized the importance of protecting the honour


\textsuperscript{34} Bihar Legislative Assembly Bulletin, p. 128, 1957 ed.
and privileges of the legislators and unless effective measures were provided by which member could be assured of being able to carry on their deliberations in the Chamber without interference and molestation and by which dignity of the legislature was duly protected from outside attacks, it would not be expected to function to the best advantage”.

The Presiding Officers of Legislative bodies in India, the President of Central Legislative Assembly, Sir Abdul Rahim submitted a memorandum in 1938 to the Reform Commission of Government of India for necessary Amendment of Sections 28 and 71 of the Government of India Act, 1935, pointing out that the Central and Provincial Legislatures in India be given the same privileges, powers and immunities as were enjoyed by the Legislature in the Dominion and Colonies.

(iii) Independence Act, 1947

The provisions of the Government of India Act, 1935 were too ineffective and inadequate to uphold the dignity and the rights and privileges of the legislatures in India

35. Ibid., p. 402.
and to safeguard rights and privileges of members and officers therefore who feel entirely helpless against unfair and malicious attacks of unscrupulous Outsiders and Newspapers.

However, the position was altered by Independence Act 1947, which continued provisions and powers for adopting the Government of India Act, 1935 in the changed circumstances till new Constitution was framed. Consequently on the coming in the force of the Indian Independence Act, on August 15, 1947 certain Indian orders were passed by the Governor General to amend the Government of India Act, 1935 in exercise of powers conferred on him by clause(i)(c) of section 9 of the Act of 1947. The first of such orders apart from other amendment, deleted clause (3) and (4) of the section 28 of Act, 1935 which had placed fetters on the law making powers of the Central Legislature on the subject of its privileges. This order was further Amended in 1948, through Indian Provisional Constitution (3rd Amendment) order 1948 by which in clause (2) of Sec. 28 of the Act 1935 the words “Members of the House of Commons of Parliament of the United Kingdom” were substituted for the

38. Ibid., p. 310.
existing words “Members of the Indian Legislature.” Thus in a way, the immunities of the members of the House of the Indian Legislature were equated with those of Commons in England. Though all the powers and privileges of the House of Commons were not vested with the Legislative Assembly as a body. No amendment was made in section 71 on the same lines relating to the Provinces and it was left unaltered and the status-quo, as it existed under the Act of 1935 was maintained. No further amendment took place as the Draft Constitution of India had become known by that time.39

The Draft Constitution of India in Article No. 85 had proposed the privileges in the following form.

85(1) Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

85(2) No members of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof.

85(3) In other respect, the privileges and immunities of members of the House shall be such as may from time

39. The Drafting Committee of the Constituent Assembly of India submitted its report to Constituent Assembly in Feb. 1948, which was published soon after.
be defined by parliament by Laws, and until so defined shall be such as are enjoyed by the member of the House of commons of Parliament of UK at the commencement of the Constitution.

85(4) The provisions of clauses (1), (2) and (3) of this Article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise part in the proceedings of a House of Parliament as they shall apply in relation to members of Parliament.\textsuperscript{40}

These two Articles viz. 105 and 194 were not passed by the Constituent Assembly without demur. Several prominent members of the Consistent Assembly objected to the Article on various grounds H.V. Kamath led the attack when he stated that the reference made to in respect of other privileges was neither necessary nor desirable when the Constitution Assembly was specifically engaged in giving ourselves a Constitutions and for such a reference to the House of commons, when most of the members do not know what are privileges of members of the House of Commons, Sh. Kamath remarked:

\textsuperscript{40} In Draft Article, 169, Similar Provisions were contained which related to the House of State Legislatures.
“...Does it add to the dignity of the Constitution...? Will it not be for better, for happier for us to rely upon our own precedents, or our own traditions, here we have, in India, than to import something from elsewhere and incorporate it by reference in the Constitution?”

Shibban Lal Sexena, another member -made a specific suggestion that appendix containing the privileges of the members should be appended as most of the members do not know as to the privileges of the House of Commons are. Naziruddin Ahmed was equally vehement and his attack was even more gent, when he stated:

“The provisions of clause (‘3) of Art. 105 are vague. The privileges and immunities, it provides for are of the vaguest description possible or imaginable... If a member who wants to move about in his constituency desires to know his rights, he will have to take the help of an English Attorney to enlighten him.... I suggest that at the end there should be added a Schedule. The

rights and privileges of members should not be left to be ascertained from text books of English law.”

Sir Alladai Krishna Swami Ayyer, One of the prominent members of the drafting Committee, defended the provision as proposed in the Draft Article and added that it was not possible due to lack of time to formulate all the privileges in compendious form. The other reason put forth by the member was that there was nothing to prevent Parliament from setting up proper machinery for formulating the privileges as the article leaves wide scope for it. It is only a temporary phase, the member added that the privileges of House of Commons are made applicable to this House.

No such amendments were passed and Dr. Ambedkar, the Chairman of Drafting Committee did not intervened when privileges of House of Parliament were being discussed. However, the matter was further, discussed and debated when the corresponding provisions in respect of Privileges of State Legislature came for discussions before the Assembly. It was H.V. Kamath again who led the attack

42. C.A.D., Vol. VIII, p. 147.  
44. These provisions are contained in Draft Act, p. 169.
and by that time the matter was also discussed in Press and the Press was critical of the way in which the matter was dealt with by Constituent Assembly. He reiterated its earlier stand but added that if they were bent upon to simplify it for the sake of brevity, then they should have thought of this alternative by making a reference to a written constitution of some other country and that would not have been absolutely repugnant to him yet insisted on recasting of the clause by omitting any such reference.\(^{45}\)

Naziruddin Ahmed picked up the thread and stressed the need for appending an appendix as especially in the midst of the difficulties when the privileges of the House of Commons are now here collected in some systematic form and in the light of these it is both necessary and desirable not to postpone the matter any member even stated that he had a ready Draft on privileges, which he would submit at a suitable stage.\(^{46}\)

Dr. P.S. Desmukh Suggested that privileges of the State Legislatures should be co-extensive to those enjoyed by Parliament and it should be Parliament to define the privileges as and when it is done because the privileges of State Legislatures are likely to very. It is submitted that

\(^{46}\) Ibid., pp. 580-81.
this suggestion was very relevant, as it in unified Code of Privileges.\textsuperscript{47}

On seeing, that members and even press was agitated, Dr. Ambedkar intervened to state exactly what the resources were for adopting such a course The reasons put forth by him were mainly two, namely that it was not possible to define what are the acts and deeds which constitute the contempt and breach of privilege and secondly he did not desire the long enumeration of privileges as it would need another 20-25 relating to privileges and immunities of Parliament.\textsuperscript{48}

It is submitted that the reasons advance by Dr. Ambedkar, for not taking into account the suggestions of other prominent legislators like Kamath and Desmukh are not convincing for two reasons. Firstly that during the 60 years of working of Constitution, it has been demonstrated that the interpretation of clause (3) of Article 105 and 194 has been the main root of confusion and controversy and secondly the views expressed by Members of Assembly and more, particularly by H.V. Kamath were ignored without looking to its merits However, the Constitution [44\textsuperscript{th} Amendment] Act. 1978 has removed the flaw in drafting

\textsuperscript{47} Ibid., p. 581.
\textsuperscript{48} Ibid., pp. 582-83.
this clause of the Constitution by omitting reference to House of Commons.

**Parliamentary Privileges in India**

Privilege means a special right or exceptional right enjoyed by a particular class of persons or individuals which is not available to the rest of people. In the legal sense it means exemption from some duty or burden to which other are subject. In the context of Parliamentary privilege means certain right and immunities enjoyed by each house of Parliament and its committees collectively, and by members of each house individually without which they can not discharge their functions efficiently.

The object of the Parliamentary privilege is to safeguard the freedom and dignity of the institution of Parliamentary and its members. They are granted by the constitution to enable them to discharge their functions without any hindrance. But they are not exempted from the general laws of the country as a citizen of the country unless there is sufficient reason in the interest of parliament itself. The fundamental principle is that all citizens & including members of parliament should be treated equally before the law. The privileges are available to members only when they are functioning in their capacity as
member of parliament and performing their parliamentary duties.

The most important of the privileges, namely, freedom of speech in Parliament and community to members from any proceeding in any court in respect of anything said or any note given by them are specially prouded in art 105 of the constitution."^49 This article also provides community to a person from any proceeding in any court in respect of the publication by or under the authority of either house of Parliament of any report, paper, votes or proceeding.50 "Further the courts are prohibited to inquire into the proceeding of parliament under art 122."^51

As regards other privileges, art 105(3) as originally enacted provided that in other respect, the powers, privileges and communities of Parliamentary, its committees and members, until defined by Parliament by law, shall be the same as those of house of commons of the United Kingdom as on coming into force of the constitution on 26 Jan, 1950. This clause was however amended in 1978, to provide that in respect of privileges other than those specified in the constitution the powers, privileges and immunities of each house of parliament its members and

^49. Constitution of India.
^50. Art 105 of the Constitution.
committed shall be such as may from time to time be defined by Parliamentary by law and until so defined shall be those of that house, its members and committees immediately before the coming into force of section 15 of the constitution (44th Amendment) Act, 1978 (w.e.f. 20 June, 1978). This amendment in fact has made only verbal changes by omitting all references to the British House of Commons but the substance remains the same. In other words each house in actual practice shall continue to enjoy the powers, privileges and immunities (other than those specified in constitution) that were available to the British House of Commons as on 26 Jan. 1950. In other words, of Parliament enacts any provision relating to any particular privilege at any time, the English Precedents will to that extent be superseded in its application to on parliament.52 No such legislation having been made by on Parliament the privileges are same as in the house of commons, subject to such exceptions as necessarily follow from the difference in the constitutional set-up in India. The British Parliament has not codified its privilege so far. There privileges are based on precedents and past practices opinions are divided both in England as well as in India regarding the

codification of Parliamentary privileges. Predominant is that codification is more likely to harm the prestige and sovereignty of parliament/State legislatures.53

In this respect following observations made by Mr. H. Hidayatullah, former Chief Justice of India and former vice-president of India and Chairman of Rajya Sabha are pertinent.

"If there is mutual trust and respect between Parliament and the courts, there is hardly any need to codify the law on the subject of privileges. With a codified law more advantage will flow to persons bent on reflifying Parliament, its members and committees and the courts will be called upon more and more to intervene. At the moment, given a proper understanding on both sides, Parliamentary right to punish for breach of its privileges and contempt would rather receive the support of courts then otherwise. A written law will make it difficult for Parliament as well as courts to maintain that dignity which rightly belongs to Parliament and which the courts will always uphold as zealously as they uphold their on.

1.3 **Methodology:**

As regards the methodical aspect of the study. It has been based upon the method of desk research. The study is organized to study the historical development of privilege in U.K. and in India. Explanatory and Analytical approach has been adopted to analyse the existing constitutional provisions regarding parliamentary privileges. For finding out the flaws in the existing legal provisions and the functional problems which have been witnessed with regard to exercise of privileges vis-à-vis the fundamental rights of the citizens, the public opinion, functional experience and judicial decisions have been studied. This has helped in suggesting measures for preserving and protecting the privileges of parliament within the limits prescribed in the constitution. The tools of research used in this study are constitutional provisions proceedings and debates of parliament and state legislature, Reports of privileges committees; law report and journals; and observations and decisions by the chair.

1.4 **Project of Study:**

The chapters besides the introduction, are enumerated as follows:
Chapter II – privileges of members of parliament under Indian constitution the main focus of this chapter has been to list out the privileges which are available to the members of parliament under the Indian constitution. Not only main privileges has been considered but minor privileges available to parliamentarians are also considered. Judicial review of the privileges available to members of parliament has been done.

Chapter III : Privileges available to the parliament under Indian constitution. In this chapter, the main thrust is on to draw the list of privileges which are available to the parliament itself. Not only main privileges but minor privileges has been listed out with judicial review of the privileges.

Chapter IV : Parliamentary privileges vis-à-vis fundamental rights. In this chapter, main thrust is on to solve the conflict between fundamental rights and parliamentary privileges, various authentic judgments of the courts has been discussed in this chapter and it has been discussed in the chapter that who with prevail whether fundamental rights over the parliamentary privileges or privileges well prevail over fundamental rights.
Chapter V: Parliamentary Privileges in modern changing scenario. In the chapter parliamentary privileges in modern context has been discussed. Not only this but why codification has been opposed of parliamentary privilege has been discussed. What are the pros and cons. Of codification of parliamentary privileges has been discussed.

Chapter VI: conclusions and Suggestions. After the study of the position of parliamentary privileges under the Indian constitution, an attempt has been made to summaries the conclusion which have emerged there form. The basis for the grant of these privileges and its significance in the democratic setup have been highlighted. The debate regarding the codification of privileges has also been discussed.